

Brown v. City of Oakland, Case No. 21-cv-02881-RS – final injunctive relief

Plaintiffs Kierra Brown and Toshua Sears and Defendant City of Oakland (the “parties”) agree to the following injunctive relief:

1. To the extent not already set forth within its crowd control policy (Training Bulletin TBIII-G), OPD will insert within its crowd control policy the following requirements:

a. Any crowd control Operations Plan that calls for the deployment of chemical agents or less-lethal specialty impact munitions (“SIM”, which includes what Penal Code § 13652 describes as “kinetic energy projectiles”) into the field must be approved by the Chief of Police in advance of that deployment.

b. SIM may not be used unless deescalation techniques or other alternatives to force have been attempted, when objectively reasonable, and have failed. (Pen. Code § 13652, subd. (b)(1).)

c. SIM may not be used before persons are given an objectively reasonable opportunity to disperse and leave the scene. (Pen. Code § 13652, subd. (b)(3).)

d. Direct Fired SIM shall be used only when other means of arrest are unsafe and when the individual can be targeted without endangering other crowd members or bystanders, given consideration of how close the individual is to others, whether crowd members are moving, and factors that may affect the visibility and the accuracy of shot placement, such as chemical agent deployment.

e. The mere fact that an individual is picking up, about to throw, or throwing a chemical agent canister previously deployed by law enforcement, or other object, does not automatically constitute an immediate threat of loss of life or serious bodily injury. Among the totality of the circumstances, members must consider the size and composition of the object, the distance from which it is being thrown, and the potential effects of the object being thrown.

f. The use of Direct Fired SIM must cease when the violent or destructive actions cease. These weapons must not be used for the purpose of apprehension or to otherwise prevent escape unless escape would present a substantial risk of continued immediate threat of loss of life or serious bodily injury.

g. Repeated, audible announcements must be made announcing the intent to use Direct Fired SIM and the type to be used, when objectively reasonable to do so.

h. Direct Fired SIM shall not be aimed at the head, neck, spine, or any vital organ, including the spleen, liver, kidneys, throat, left arm pit, or groin. (Pen. Code § 13652, subd. (b)(9).)

i. Direct Fired SIM shall not be used against a person who is under restraint.

j. Only trained and currently qualified members are authorized to use SIM.

k. Medical assistance shall be promptly provided for injured persons when it is reasonable and safe to do so. (Pen. Code § 13652, subd. (b)(8).) Any person known to be struck by a round shall be transported to a hospital for observation and any necessary treatment, unless that person voluntarily leaves the scene or declines to be transported. Ambulance service, if required, shall be ordered per Department General Order I-4, AMBULANCE SERVICE. First aid, when necessary, shall be administered per Training Bulletin III-K, FIRST AID. Members shall ensure, to the extent reasonably possible, that medical attention is available for injured persons and for people affected by crowd control chemical agents, unless that person voluntarily leaves the scene or declines medical attention.

1. CS Blast Dispersion grenades and other hand-thrown devices emitting light, sound, and Orthochlorobenzalmalononitrile (CS) shall not be thrown directly into a crowd, at persons, or where they will explode above or near people's heads, but shall be thrown at a safe distance from persons.

m. All OPD pathfinder officers will be assigned a personal digital recording device (PDRD) regardless of rank.

2. OPD will clarify in its crowd control policy that:

a. Skip-fired or indirect fired less-lethal specialty impact munitions include wooden dowels, Multiple Wood Baton rounds, Stinger grenades, Sting Ball grenades, launched Sting Ball munitions, Stinger Rubber Balls rounds, Multiple Foam Baton Rounds, Multiple Rubber Baton rounds, Multi 5-Foam Baton Rounds, and all other devices that are designed to be skip-fired or which contain pellets or projectiles that disperse in a non-directional, non-target specific manner.

b. Direct Fired SIM, also known as kinetic energy projectiles, are less-lethal specialty impact munitions that are designed to be direct fired at a specific target, including but not limited to flexible batons ("bean bags"), pepper balls, FN303s, direct impact rounds, foam rounds, foam baton rounds, exact impact rounds, sponge rounds, 40mm rubber baton rounds, and similar munitions which may or may not have a foam rubber tip. This includes kinetic energy projectiles as defined in Pen. Code § 13652, subd. (d)(1) to include items commonly referred to as "rubber bullets".

c. Flexible batons, also known as bean bag or stun bag rounds, that are fired from a shotgun shall not be used at crowd events.

d. Penal Code section 13652's restrictions on "kinetic energy projectiles" and "chemical agents" apply to CS Blast Dispersion grenades and other hand-thrown devices emitting light, sound, and chemical agent.

3. The parties recognize and agree that OPD did not utilize any less-lethal impact munitions (SIM) against demonstrators on June 1, 2020, although mutual aid agencies did use such munitions, including indirect-fired munitions.

FINAL NON-MONETARY RELIEF AGREEMENT

1. The Alameda County Sheriffs Office “(ACSO)” shall apply the requirements of Penal Code section 13652 to all crowd management events, including any assembly, protest or demonstration. These requirements include ensuring that kinetic energy projectiles and chemical agents shall only be deployed by a peace officer who has received the training required under subsection (b) when “the use is objectively reasonable to defend against a threat to life or serious bodily injury to any individual, including any peace officer, or to bring an objectively dangerous and unlawful situation safely and effectively under control” and only in accordance with the requirements set forth in subsections (b)(1) through (b)(11).
2. ACSO shall construe the terms “kinetic energy projectiles” and “chemical agents” in Penal Code section 13652 to include hand-thrown or launched crowd control munitions that have an explosive component, including those that do not contain a chemical agent.
3. ACSO agrees that it will not deploy less lethal munitions from shotguns during crowd management events.
4. ACSO personnel shall not use the following less lethal munitions at a peaceful, lawful protest, such as when there are no actual or threatened acts of serious bodily injury: (a) Skip-fired or indirectly fired projectiles such as wooden dowels, Stinger Rubber Ball hand-deployed munitions, 40mm Sting Ball munitions, and other devices containing pellets or projectiles that disperse in a non-directional, non-target-specific manner; and (b) hand-deployed light and sound distraction devices.
5. For individuals who are picking up, throwing, disabling, manipulating, or reducing the effects of a less lethal munition previously deployed by law enforcement, ACSO personnel will consider the totality of the circumstances as defined by *Graham v. Connor* before deploying kinetic energy projectiles and chemical agents consistent with Penal Code section 13652.
6. ACSO personnel shall not deploy less lethal munitions containing explosive components directly into peaceful and lawful crowds. If personnel are authorized to use these devices after taking into consideration all of the requirements of Penal Code section 13652, the devices shall be deployed in a manner consistent with applicable federal and/or California law, and ACSO policy and training. Strong efforts will be made to minimize the risk of serious personal injury to all those in attendance, including innocent bystanders and law enforcement personnel, and to move the crowd in a direction in a direction that will accomplish a legitimate law enforcement objective.
7. Kinetic energy projectiles and chemical agent devices and munitions shall be inventoried before and after pre-planned crowd management events if such munitions are deployed. In the context of an emergency response to violence, major vandalism, theft or looting, ACSO will make best efforts to inventory such munitions. Personnel shall report on all uses of such munitions in compliance with Penal Code section 13652.1, and any other applicable federal and/or California law, ACSO policy and training.

EXHIBIT B